REMARKS

The Examiner states that the foreign priority documents have not been filed and that the priority claim in the first sentence of the specification is missing.
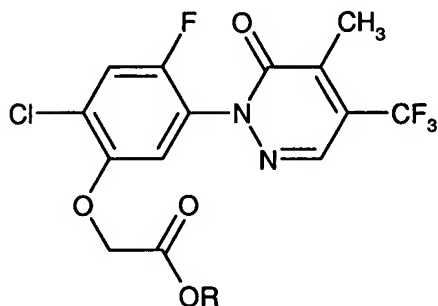
The foreign priority document will be filed once if is received from our foreign associates. This application was filed as a continuation with a Preliminary Amendment that added the necessary language for claiming priority. The Examiner is asked to check if the Preliminary Amendment was entered.

Claims 10-17 stand rejected under 35 U.S.C.§ 112, second paragraph, as being indefinite. Applicant has amended claim 10 to overcome this rejection. Withdrawal of the same is respectfully requested.
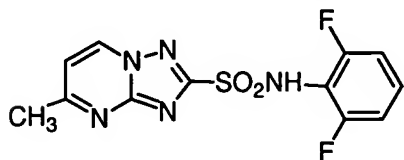
Claims 10-17 also stand rejected under the judicially created doctrine of double patenting over claims 1-9 of copending Application No. 10/479,479. Applicant intends to remove the overlapping subject matter which is claimed in the copending application in order to overcome this provisional double patenting rejection, since no claims have been allowed in either application.

Claims 10 and 14 stand rejected under 35 U.S.C. § 102(a) and (b) as being anticipated by Mito (FR 2 781 983). The Examiner states that Mito teaches the synergistic combination of a pyridazinone phenoxyacetate ester herbicide with sulcotrione, mesotrione, isoxaflutole or isoxachlortole.

Mito discloses a herbicidal composition comprising compounds of the 2-chloro-4-fluoro-5-(4-methyl-5-trifluoromethylpyridazine-3-one-2-yl)phenoxy acetate ester type with *inter alia* mesotrione. The 2-chloro-4-fluoro-5-(4-methyl-5-trifluoromethylpyridazine-3-one-2-yl)phenoxy acetate ester type compounds have the formula:
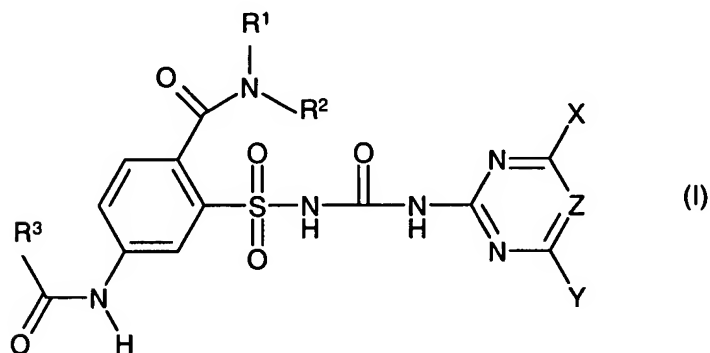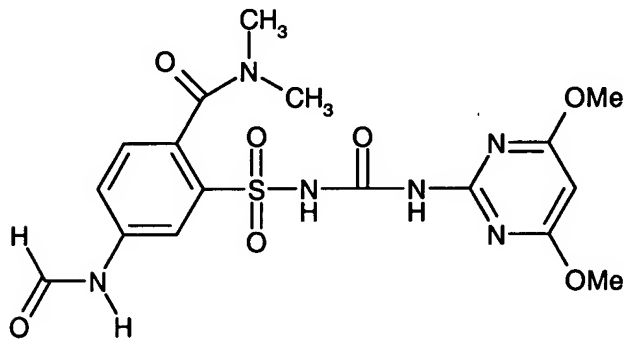

Flumetsulam has the formula:

As can be seen, there is <u>no similarity between the two structures</u>; therefore Mito does not disclose the synergistic combination of flumetsulam with mesotrione (or sulcotrione, isoxaflutole or isoxachlorotole).

Claims 10-15 stand rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Hacker et al. (US 6,486,096. The Examiner states that Hacker et al. teach herbicidal compositions comprising acylated aminophyenylsulfonylureas in combination with secondary herbicides.

Hacker discloses herbicide combinations comprising a compound of formula (I)

with a second herbicide, one of which may be mesotrione. Flumetsulam is not a compound of formula (I). Furthermore, the Examiner refers specifically to Table 13 (column 36) which provides data for the combination of a compound of A1.1 and B1.4.4. B1.4.4 is mesotrione, but the compound A1.1 has the structure

Again, this is clearly **not flumetsulam** and therefore Hacker et al do not disclose combinations of flumetsulam and mesotrione. Therefore the showing of synergistic results in the Office Action has no relationship to Applicant's claimed invention.

Claims 10-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Hacker et al. and Mito.
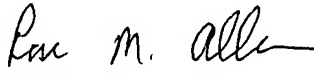
The present invention relates to a combination of **mesotrione with flumetsulam**. Neither Hacker et al nor Mito make any reference to flumetsulam in their disclosures. Therefore, one of ordinary skill in the art would have received no motivation to combine mesotrione with flumetsulam to make the combination of the present invention. The present invention is therefore non-obvious over the combination of Hacker et al and Mito.

Applicant encloses herewith a Declaration under 37 C.F.R. § 1.132 in support of the unexpected synergistic results of the combination of mesotrione and flumetsulam.

In view of the above, Applicant respectfully requests that the Examiner withdraw the rejections of claims 10-17 and issue a Notice of Allowability for all claims. Early and favorable issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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